

Duke Tax Policy – Duke Kunshan

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EXECUTIVE SUMMARY

The Duke Tax Policy – Duke Kunshan is designed to remove any personal financial obstacles for Duke Faculty and Staff Members to contribute their talents to the development of Duke Kunshan University by ensuring that their tax payments while on assignment at Duke Kunshan remain approximately the same as they would have if they had worked in the US. The Tax Policy ensures that an assignment to Duke Kunshan neither adds significantly to the personal tax liability nor results in significant tax savings due to differences in income tax costs between the US and China. If a Duke Faculty or Staff Member has a China individual income tax obligation on Duke income sourced in China, Duke Kunshan will remit taxes to the Chinese tax authorities. Further, in accordance with the agreement between the US government and the government of the People’s Republic of China, this Tax Policy will ensure the avoidance of double taxation. Duke Kunshan will cover the costs associated with the implementation of the Tax Policy, including tax return preparation and filings through a designated professional tax services firm. In order to receive the protection and benefits of this Tax Policy, Duke Faculty and Staff Members must fully comply with its provisions and procedures.

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INTRODUCTION

The Duke Tax Policy – Duke Kunshan (“**Tax Policy**”) applies to Duke University (“**Duke**”) faculty or staff members (“**Duke Faculty or Staff Members**” or “**Assignees**”) who (1) are on assignment at Duke Kunshan University (“**DKU**”), (2) have a change in actual taxes because of assignment allowances and/or China Individual Income Tax (“**China IIT**”) obligations, and (3) are approved by Duke and DKU as entitled to the benefits of this Tax Policy. This Tax Policy is initially recorded as of July 2016. Its effective date is January 2013 because the goal of the Tax Policy is to organize the details that have been in place for Duke Faculty or Staff Members or Assignees who have traveled since that time.

Duke has implemented this Tax Policy with the goal of removing any personal financial obstacles for Duke Faculty and Staff Members to contribute their talents to the development of DKU. It is designed to ensure that tax obligations for its employees remain approximately the same as they would have if they worked in the US. The Tax Policy is designed to ensure that an assignment to DKU does not add significantly to the personal tax liability or result in significant tax savings due to differences in income tax costs between the US and China. Therefore, under this Tax Policy, Assignees pay theoretical (stay-at-home) US income tax on those items of compensation as agreed upon in the Duke Faculty or Staff Member’s assignment letter. The Tax Policy is limited to income and social security taxes. It specifically excludes, without limitation, taxes such as inheritance/estate tax, gift tax, sales tax and property tax.

I. ADMINISTRATION

This Tax Policy is administratively managed by the Duke Kunshan Support Unit in the Office of the Provost (“**Support Unit**”) and the Office of Human Resources at DKU.

II. PROFESSIONAL SERVICES

Duke has engaged a professional services firm (“**PS Firm**”) to provide certain professional services to Duke and through Duke to the Assignee. The PS Firm will seek from Duke, and Duke will provide to the PS Firm, information about the salary, benefits and allowances provided to the Assignee by Duke and DKU for use by the PS Firm in calculating the hypothetical tax. The PS Firm will communicate the hypothetical amount to both Duke and the Assignee. Duke and the Assignee agree that the hypothetical tax calculation will be the basis of individual income tax withholding by Duke from the employee’s Duke paycheck.

III. EMPLOYEE RESPONSIBILITIES

As a condition and term of employment by Duke, and of Duke’s agreement to provide the benefits of this Tax Policy, the Assignee must:

- Comply with this Tax Policy.
- Meet with the PS Firm in the US prior to departure for China and the PS Firm in China upon arrival.
- For US tax preparation services, provide requested information to the PS Firm by March 1 of each year to meet required filing deadlines. Otherwise, Assignee will be responsible for any interest and penalties incurred with the filing of US tax returns.

If the Assignee is uncertain about providing information or documents that the PS Firm asks for or about complying with PS Firm directions to fill out or sign a form, the Assignee must communicate the objection or concern to the PS Firm as soon as possible.

- Inform Duke and the PS Firm about a contemplated or anticipated receipt of salary, payments or compensation from a source other than Duke or DKU as soon as the Assignee contemplates or anticipates the event so that the PS Firm can evaluate the consequences of the event, if any, for the Assignee's US and/or PRC taxes.
- Authorize Duke to withhold and remit from salary an amount equal to the hypothetical income tax calculated by the PS Firm, if applicable.
- Pay all US individual income tax obligations associated with non-Duke revenue, including without limit, individual income tax the Assignee might owe for:
 - interest;
 - dividends;
 - rental income/losses;
 - spousal income;
 - partnership income/losses;
 - capital gains/losses; and
 - pension income.

If an Assignee chooses to use another PS Firm to file their annual returns, the Assignee must submit any requested information to the PS Firm by the deadlines communicated to permit the PS Firm to prepare the “**Tax Equalization**” settlement for Duke.

IV. DUKE AND DKU RESPONSIBILITIES

DKU will reimburse Duke for all PS Firm fees and expenses associated with the assistance it provides in preparing one US federal return and up to three separate US state returns. The PS Firm will prepare and file all returns but the Assignee will be responsible for any preparation and filing expenses beyond three state returns.

DKU will bear the cost of any China IIT. In addition, DKU may cover the costs of the actual US income tax (if applicable) on the following items as agreed upon in the Duke Faculty or Staff Member's assignment letter:

- salary supplements and allowances;
- relocation benefits;
- housing benefit;
- education benefit; and
- other assignment-related provisions.

The Support Unit and the DKU Office of Human Resources will connect Assignees with the PS Firm and generally facilitate and support the relationship to ensure effective communication and timely action, as well as the provision of information by Duke or DKU that may be necessary during the process.

V. THE TAX POLICY IN OPERATION

China Individual Income Tax

After a Duke Faculty or Staff Member spends a minimum amount of time working in China but less than five years, the Assignee will have a China IIT obligation on income sourced in China. This Tax Policy intentionally does not specify the amount of minimum time spent working in China by a Duke Faculty or Staff Member which would trigger China IIT obligations for China-sourced income. The rules often change and the analysis can depend upon many factors. If an Assignee resides in China for more than five full consecutive years, their worldwide income would be subject to tax in China starting in the sixth year. The China-based PS Firm will explain the implications on this issue.

If an Assignee's "main" role in China is teaching/research, he or she may be eligible for a China IIT exemption. If eligible, the PS Firm will ask the Assignee to apply for a Tax Residency Certificate from the US Internal Revenue Service that shows that the individual is a taxpayer in the US and therefore, based on the US-China Tax Treaty, may be eligible for a three-year "scholarly exemption" of the China IIT. Assignees should expect to pay a filing fee that can be submitted for reimbursement. Once the Certificate is received, the China-based PS Firm will assist the Assignee in applying for the exemption. Once the exemption has been granted, there is an annual application process. Administrators are not eligible for this exemption.

For administrators and other Assignees without the scholarly tax exemption, the China-based PS Firm on behalf of DKU will pay on a monthly basis the China IIT owed by these Assignees, as required by Chinese law. In order to calculate the monthly China IIT obligation, Duke will provide salary, benefits and allowance information and DKU will provide other in-country benefits and allowance information to the PS Firm.

US Taxes

Through Duke, Assignees will be provided US tax preparation services by the PS Firm if eligible under this Tax Policy. Assignees will be asked to provide requested information to the PS Firm by March 1 of each year. If the Assignee has not complied with their obligations to provide requested information to the PS Firm so that required filing deadlines can be met, the Assignee will be responsible for any interest and penalties incurred with the filing of US tax returns.

The PS Firm will advise the Assignee on the best tax position to take on the US returns to (1) avoid any personal tax liabilities or tax savings due to differences in income tax costs between the US and China, and (2) minimize the costs to DKU. Any foreign tax credits for foreign taxes paid by DKU, which reduce the US income tax liability before, during, or subsequent to an assignment to DKU, are owned/utilized by Duke and DKU. This also applies to foreign earned income exclusions, US Alternative Minimum Tax credits and Claim of Right credits. After the assignment, Duke and DKU determine whether to keep the Assignee in the Tax Equalization program if they have carryover items that may be used in the future. Duke and DKU retain the tax benefit for utilization of the foreign tax credit. DKU will continue to pay for the preparation of the US income tax return(s) during these years.

Itemized deductions are different during assignments to DKU, mainly because the Assignee's personal residence may be temporarily rented or sold and the state residence position may alter, affecting the actual state tax liability. In addition to the "actual" itemized deductions as reported on the US federal tax return, Duke allows a deduction for the hypothetical state income taxes charged under this Tax Policy up to the \$10,000 maximum deduction for state tax, real estate and property tax deductions.

Social Security/Medicare tax is withheld on the Assignees total income, which includes the assignment-related allowances. Assignees are only responsible for OASDI and Medicare tax incurred on “stay-at-home” income (i.e. excluding payments on the assignment-related allowances). The Duke payroll system will calculate social security tax, which will be deducted from each paycheck and remitted to the tax authorities. Any excess social security tax over and above the hypothetical obligation will be reconciled with the final settlement.

Taxability of Payments made by DKU

China IIT and any benefits and allowances that are considered taxable in the US and paid to or on behalf of the Assignee by DKU during the year must be imputed in the Duke payroll system so it is reflected as taxable income on the W-2. On a monthly basis, the Support Unit collects this information from the China-based PS Firm and DKU. These payments are imputed for the Assignee in the Duke Payroll system in December of each year.

Hypothetical Tax: Process and Calculation

Those Assignees with a China IIT obligation will have different withholding obligations in the US. Instead of paying an “actual tax” to the US federal government, Assignees will have a “hypothetical tax” withheld monthly for the duration of the assignment. This estimated amount will be based on the Assignee’s hypothetical stay-at-home income, considering marital status, filing status, dependents, itemized deductions and non-Duke income. Accurate projections of the tax liability are essential to minimize “due to/from” payments so Assignees are asked to make every effort to work with the PS Firm on this calculation. Assignees will have to sign documentation to allow Duke to change their payroll withholdings to hypothetical tax.

Hypothetical taxes are generally computed annually to establish the appropriate withholding level for the whole year. The calculation is only revised if the Assignee experiences a significant change in their personal situation (e.g. large increase in salary, change in marital status, etc.). Duke requires notification of a qualifying life event within 30 days of the event. If a revised calculation is necessary, the PS Firm works with Duke to adjust the hypothetical withholdings.

Hypothetical US tax takes into account all anticipated federal and state income tax obligations and social security contributions. For non-US citizens, any anticipated state tax will be calculated based on residency in North Carolina.

Year-end Filings

Those Assignees with an obligation to pay China IIT or with a tax exemption will have to file an annual return in China. The China-based PS Firm will keep the Assignee informed of appropriate deadlines and complete the annual filing requirements in China. Assignees who have an exemption from paying China IIT still have an obligation to file an annual return in China.

The US-based PS Firm will keep the Assignee informed of appropriate deadlines, prepare and file the US and applicable state tax returns and prepare a year-end Tax Equalization statement for Assignees.

Both processes will require full cooperation from the Assignee.

Final Settlement

The Tax Equalization settlement usually results in an amount due to/from the Assignee. The Tax Equalization calculation represents the reconciliation of the theoretical (stay-at-home) tax liability with the amount of hypothetical tax withheld and/or any actual taxes paid.

Monies owed to the Assignee from Duke will be paid on the next available Duke Payroll cycle after the preparation of the Tax Equalization calculation. Monies owed to Duke by the Assignee must be settled within 30 days of the preparation of the Tax Equalization unless such balance will be funded in whole or in part by refunds claimed on the tax returns, in which case settlement should occur within 10 days of receipt of the last refund to be received.

Tax Equalization settlements are prepared annually at the same time the tax returns are completed. A copy of the calculation is included in the package of tax returns sent by the PS Firm to ensure consistency and proper application of the Tax Policy.

VI. POLICY PROVISIONS

Employment Termination

If the assignment to DKU or the employment with Duke is terminated, the Assignee will be subject to the provisions of the Tax Policy through the assignment end date or date of termination. Any tax obligations in the US and China that relate to income earned after the assignment end date or date of termination are entirely the responsibility of the Assignee. Any foreign tax credits for foreign taxes paid by DKU, which reduce the US income tax liability before, during, or subsequent to an assignment to DKU, are owned/utilized by Duke and DKU. Assignees must work with Duke and the PS Firm for Tax Equalization purposes for all annual filings that include assignment related income or deductions required in the year(s) following the assignment end date or termination.

Interpretation and Exceptions

The Duke Provost have ultimate authority with respect to assignments to DKU and therefore this Tax Policy, in consultation with the DKU Executive Vice Chancellor. All requests for exception to the Tax Policy will be reviewed by Duke, in consultation with DKU. In the event of varying interpretation of the Tax Policy, Duke, in consultation with DKU, will consult with the PS Firm to arrive at a fair and equitable solution for all parties.

Amendments

The Tax Policy may be wholly or partially amended or otherwise modified at any time at the sole discretion of Duke, in consultation with DKU.

ANNEX 1: Acknowledgment of Understanding and Consent

Assignee Name: _____

Time Period of DKU Assignment: _____

I give my consent to Duke to provide any of my payroll, benefits and allowances information related to my employment at Duke and assignment to DKU to the PS Firm that provides services to Duke (currently KPMG LLP). For this purpose, I further consent for Duke to obtain from DKU any benefits and allowances information paid to me or on my behalf by DKU.

I will fulfill the employee responsibilities listed in this Duke Tax Policy – Duke Kunshan and provide, by the deadlines communicated, any required documents that are not available to Duke or DKU in order for the PS Firm to implement the Tax Policy on my behalf.

I have read and fully understand the Tax Policy, and I agree to abide by the Tax Policy.

NAME

DATE

ANNEX 2: Definitions

Assignee – A Duke University faculty or staff member who is on assignment at Duke Kunshan University.

China IIT – China Individual Income Tax.

Foreign Tax Credit – US tax credit designed to help minimize double taxation of income and can reduce U.S. federal and in some cases, state individual income tax.

Hypothetical Stay-at-Home Income Tax – The tax the Assignee would have paid had he/she remained in the US.

Tax Equalization – A process that ensures that tax obligations for the employee on an international assignment remain approximately the same as if the Assignee would have worked in the US.

PS Firm – The professional tax services firm contracted by Duke to provide professional services to Duke and through Duke to the Assignee.

US-China Tax Treaty – Agreement between the US government and the Chinese government for avoidance of double taxation and the prevention of tax evasion with respect to taxes on income.